

FEDERAL COURT OF APPEAL

BETWEEN:

NELL TOUSSAINT

Appellant

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**REPLY OF THE PROPOSED INTERVENER CHARTER COMMITTEE ON POVERTY
ISSUES TO THE RESPONDENT'S WRITTEN REPRESENTATIONS OPPOSING THE
MOTION TO INTERVENE**

1. The Respondent argues that the division of argument between counsel for the Applicants and counsel for CCPI before the Federal Court, permitting CCPI to take primary responsibility for section 15 and section 1 of the *Charter* and the rule of law component, indicates that CCPI intends to “to supplant the role of Appellant's counsel” in the Appeal, On the contrary, the division of argument was presented to and approved by the Federal Court as a means of ensuring “efficiency and helpfulness for the Court” –qualities which are important in considering whether it is appropriate to grant intervenor status in the Appeal.¹ If granted leave to intervene, CCPI will of course

¹ Affidavit of Anna Thompson, Exhibit "A", Transcript of Proceedings Heard Before Justice Judith Snider, p. 15, lines 8 - 11 and line 23.

again take direction from the panel hearing the appeal as to the most effective and expeditious division of the time available for oral argument.

2. Contrary to the submissions of the Respondent, CCPI does not seek to intervene “on all of the issues that the Appellant advances.” CCPI has identified five discrete legal issues which it proposes to address, related to the *Charter*, the rule of law, and poverty issues. It does not propose to address other issues raised in the appeal, such as whether the Minister has the discretion under section 25(1) of the IRPA to waive fees, or the proper statutory interpretation of section 25(1) of the IRPA.

3. At trial, CCPI did not address many of the issues addressed by the Applicants, including *inter alia*, the applicants’ standing to advance the *Charter* claims, the particular remedies sought by the Applicants, or any of the issues of statutory interpretation argued by the Applicants. CCPI restricted its submissions to legal issues relevant to its unique expertise, those which required the Court to consider broader patterns of social and historical disadvantage, prejudice, stereotypes and the application of constitutional principles to administrative proceedings to which poor people seek access. At the conclusion of the hearing, the Court stated that “I have been given a beautiful set of arguments to deal with, both orally and in writing.”²

4. The Respondent argues that the Court’s comment that the Applicants’ counsel appeared to have given away the “heavy lifting” suggests that CCPI had taken over the role of Applicants’ counsel before the Federal Court. Rather, the reference was to the

² Ibid, p. 288, pp.15-17.

fact that the Court considered the *Charter* arguments, and in particular the section 15 arguments based on poverty and receipt of public assistance, taken on by CCPI, to be “the toughest argument.”³

5. The Respondent argues that CCPI does not have an interest in the case because it is not an applicant for H & C who is unable to pay the fees. However, the scope of *Charter* protections from discrimination because of poverty or receipt of social assistance raises unresolved issues of *Charter* interpretation which require an analysis that goes beyond the confines of the facts of this case. The determination of these issues of law will have implications that go beyond the remedy sought by the Appellant. “[I]t is important in dealing with *Charter* issues raised for the first time, that the Courts have the assistance of argument from all segments of the community. The Courts should not resist but should welcome such assistance.”⁴

6. CCPI submits that the Respondent misapplies the concept of “neutrality” in relation to the value of interventions. It is not necessary for CCPI to propose to advance arguments that are adverse to the Appellant in order to provide a useful and different perspective that is of assistance to the Court, as CCPI has done in many previous interventions at the Supreme Court of Canada. In the article cited by the Respondent, Major, J. identifies a number of ways in which interveners may be useful to the Court. These include supplementing arguments advanced by parties; arguing different or novel approaches, to constitutional provisions; providing research from a diversity of

³ Transcripts I p. 29.

⁴ *Can Labour Congress v. Bindhi et al* (1985) 2 CPC (2d) 28 (BCCA)

disciplines; and providing comparative views of other courts. In these ways, Major, J. notes that interveners with specialized knowledge may complement an appeal.⁵

7. Major J. granted CCPI leave to intervene in two cases before the Supreme Court of Canada, the JG and Baker cases. In these cases, CCPI's intervention was deemed to be useful to the Court without being "neutral" in the manner suggested by the Respondent.⁶ If granted intervener status, CCPI will be able to provide assistance to the Court in the present Appeal in all of the ways identified by Major, J.

All of which is respectfully submitted this 2nd day of February, 2010.

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⁵ Major, J. "Interveners and the Supreme Court of Canada" 1999 8:3 National 27.

⁶ Affidavit of Bonnie Morton, paras 8, 10.; SCC Case Information Docket 26005 J.G. v. Minister of Health and Community Services, et al. 1998-04-15; SCC Case Information Docket 25823 Mavis Baker v. Minister of Citizenship and Immigration 1998-03-31.

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AUTHORITIES

1. *Can Labour Congress v. Bindhi et al* 1985) 2 CPC (2d) 28 (BCCA)
2. Case Information Docket 26005 *J.G. v. Minister of Health and Community Services, et al.* 1998-04-15;
3. SCC Case Information Docket 25823 *Mavis Baker v. Minister of Citizenship and Immigration* 1998-03-31